

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEFFREY WARREN SPINNEY,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 06-309 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on December 28, 2006 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 32], filed on February 28, 2008, recommended that Defendants' motion to dismiss or alternatively for summary judgment [Doc. No. 17] be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the motion should be denied as to Defendants' contention that Plaintiff has failed to exhaust his administrative remedies under the PLRA on his excessive force claim; denied as to Defendants' argument that Plaintiff has not sufficiently alleged the personal involvement of Defendants Sherman, Robare and Reich; granted as to the Eighth Amendment deliberate indifference claim involving the plantar fasciitis condition; granted as to the Eighth Amendment deliberate indifference claim involving the wrist and hand injuries sustained during the February 2005 prison security incident; granted as to the FTCA claims involving medical negligence as to both the plantar fasciitis condition and the wrist and hand injuries; and granted as to the negligence claim involving the application of flex-cuffs.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Plaintiff was granted an extension until March 25, 2008 in which to file objections [Doc. No. 34]. No objections were filed. After de novo review of the motion and documents in the case,

together with the Report and Recommendation and Objections thereto, the following order is entered:

AND NOW, this 26th day of March, 2008;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss or alternatively for summary judgment [Doc. No. 17] is GRANTED in part and DENIED in part. The motion is:

1. DENIED as to Defendants' contention that Plaintiff has failed to exhaust his administrative remedies under the PLRA on his excessive force claim;
2. DENIED as to Defendants' argument that Plaintiff has not sufficiently alleged the personal involvement of Defendants Sherman, Robare and Reich;
3. GRANTED as to the Eighth Amendment deliberate indifference claim involving the plantar fasciitis condition;
4. GRANTED as to the Eighth Amendment deliberate indifference claim involving the wrist and hand injuries sustained during the February 2005 prison security incident;
5. GRANTED as to the FTCA claims involving medical negligence as to both the plantar fasciitis condition and the wrist and hand injuries; and
6. GRANTED as to the negligence claim involving the application of flex-cuffs.

The Court adopts the Report and Recommendation [Doc. No. 32] of Magistrate Judge Baxter, filed on February 28, 2008 as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge